



Delaware Retail Marijuana Tax

December 2024

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Tax in the Delaware Marijuana Control Act



- **New Business Licensees:** 70 cultivators licenses, 30 manufacturers, 30 retailers, 6 testers
 - Subject to typical business licensing and income taxation requirements for DE
- **Retail Tax:** 15% on the retail sales price of any marijuana product sold in Delaware
 - Monthly filing required by the 15th or nearest business day
 - Sales to medical card holders are tax exempt
 - Marijuana products are exempt from retail gross receipts tax
- **Deduction for Ordinary and Necessary Business Expenses:**
 - Delaware only deduction and only valid if the same deduction has not already occurred on the federal return



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New Year Marijuana “Tax” Bills



- **HB 408/425: Merging Medical into Adult Use**
 - Converted Adult Use businesses are now subject to applicable licensing, gross receipt tax and business income tax requirements as of conversion.
- **HB 355: State legal protections for servicing marijuana-related businesses**
 - Providing lawful services to licensed businesses engaged in the production, distribution and sale of cannabis in Delaware are not subject to prosecution under Delaware law.
- **HB 334: Technical Clean-Up to The Marijuana Control Act**
 - Established debt notice cadence of retail marijuana tax debt is the same as for withholding tax debts



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Tax Certification and costs of doing business



- The Office of the Marijuana Commissioner license applications and renewals will require Certificates of Tax Clearance for corporations or individuals with substantial ownership in a marijuana establishments.
 - Required forms: Form 8821 and Form CLR-APP
- For MRB income taxes only, a deduction is now allowed for:
 - An amount equal to the ordinary and necessary business expenses paid or incurred for the taxable year by a marijuana business operating...which is disallowed as a deduction for federal purposes pursuant to § 280E of the Internal Revenue Code [26 U.S.C. § 280E].



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Electronic Payment Only



- All Delaware Retail Marijuana Tax payments will only be received via the Delaware Portal (tax.delaware.gov)
- Cash payment requests will be politely turned away based on long standing DOR policy.
- Departmental policy will not consider an initial attempt to pay by cash as the effective date for payment of the tax.

